



ANNO QUADRAGESIMO

ELIZABETHAE II REGINAE

A.D. 1991

No. 47 of 1991

An Act to amend the Dangerous Substances Act 1979.

[Assented to 21 November 1991]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Dangerous Substances (Cost Recovery) Amendment Act 1991*.

(2) The *Dangerous Substances Act 1979* is referred to in this Act as “the principal Act”.

Insertion of s. 29a

2. The following section is inserted after section 29 of the principal Act:

Cost recovery

29a. (1) In this section—

“agency or instrumentality of the Crown” means any body corporate (other than a council) established for a public purpose by, or in accordance with, an Act:

“council” means a municipal or district council:

“dangerous substance” includes a mixture of a dangerous substance with any other substance:

“government authority” means—

(a) a department or administrative unit of the Public Service;

(b) an agency or instrumentality of the Crown;

or

(c) a council:

“principal officer”, in relation to a government authority, means—

(a) in the case of a department or administrative unit of the Public Service—the chief executive officer of that department or unit;

(b) in the case of an agency or instrumentality of the Crown—the chief executive officer of that agency or instrumentality or a person designated by the regulations as principal officer of that agency or instrumentality;

(c) in the case of a council—the chief executive officer of that council.

(2) This section applies to any incident—

(a) constituted of or arising from (whether wholly or in part) the escape of a dangerous substance;

or

(b) that involves the danger of the escape of a dangerous substance.

(3) For the purposes of this section, the escape of a dangerous substance includes—

(a) a discharge of the dangerous substance onto or into any land or water, or any structure or thing;

(b) the release of the dangerous substance into the air.

(4) Where a government authority incurs costs or expenses as a result of the occurrence of an incident to which this section applies, any such costs or expenses reasonably incurred by the government authority are recoverable as a debt in a court of competent jurisdiction.

(5) The costs or expenses may be recovered by—

(a) in the case of costs or expenses incurred by a council—the council;

(b) in the case of costs or expenses incurred by an agency or instrumentality of the Crown—that agency or instrumentality, or the Crown;

(c) in any other case—the Crown.

(6) The recovery of costs or expenses incurred by one government authority as a result of the occurrence of an incident to which this section applies (including an award or judgment in relation to those costs or expenses) does not preclude the recovery of costs and expenses incurred by another government authority as a result of the occurrence of the incident.

(7) The costs or expenses may be recovered (jointly or severally) from—

(a) the person who was the owner of the dangerous substance at the time of the incident;

(b) the person who was in control or possession of the dangerous substance at the time of the incident;

(c) the person who caused the incident.

(8) For the purposes of subsection (7)—

(a) any dangerous substance in the control or possession of an employee or agent while acting in the course of employment will be taken to be in the control or possession of the employer or principal;

and

(b) an act or omission of an employee or agent while acting in the course of employment will be taken to be the act or omission of the employer or principal,

unless it is proved that the incident is attributable to serious and wilful misconduct on the part of the employee or agent.

(9) Costs and expenses are not recoverable against a person who establishes—

- (a) that the incident was due to the act or default of another person, or to some cause beyond the person's control;
- (b) that he or she could not by the exercise of reasonable diligence have prevented the occurrence of the incident;

and

- (c) that the incident is not attributable to an act or omission of a person who was an employee or agent of his or hers at the time when the incident occurred (unless it is proved that the incident is attributable to serious and wilful misconduct on the part of the employee or agent).

(10) This section does not exclude or derogate from any right to recover an amount in respect of costs or expenses that exists apart from this section but the Crown or a government authority is not entitled to recover, in respect of the same costs or expenses, an amount under this section and an amount in proceedings founded on rights that exist apart from this section.

(11) For the purposes of this section, a body that forms part, or is established for the purposes, of an agency or instrumentality of the Crown is not to be regarded as itself constituting a separate agency or instrumentality.

(12) In any proceedings under this section, a document apparently signed by the principal officer of the relevant government authority certifying as to the incurring of costs or expenses as a result of the occurrence of an incident to which this section applies, and as to the amount of those costs or expenses, constitutes proof, in the absence of proof to the contrary, of the matters so certified.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor